



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: King Nutronics Corporation

File: B-228596

Date: November 5, 1987

DIGEST

Where initial protest to contracting agency is untimely filed, subsequent protest to General Accounting Office is dismissed as untimely.

DECISION

King Nutronics Corporation protests the award of a contract to S-E Associates under request for proposals (RFP) No. F41608-87-R-C196 issued by the Air Force for calibrator equipment.

We dismiss the protest as untimely.

By letter of April 21, 1987, to the contracting activity King protested any award to S-E on the basis of the solicitation as issued. King argued that the solicitation which solicited the King Nutronics part No. 3461-1-1 calibrator or the S-E Associates part No. UPC-5200AA calibrator was defective because the S-E calibrator was not equal to the King calibrator. King maintained that the S-E calibrator was equivalent to the King calibrator only if accompanied by additional S-E calibrator equipment. King states that the Air Force never formally responded to its protest; however, following the April 23, 1987, closing date for receipt for proposals, the agency advised King that the solicitation might be amended to include a requirement for the additional S-E equipment.

According to King, on July 1, 1987, the Air Force advised King that it had received a "revised" proposal from S-E offering the additional S-E equipment and that the proposal was being evaluated for award. On September 30 King was advised of the award to S-E and on October 1 King filed an agency-level protest alleging that the Air Force improperly awarded the contract to S-E on the basis of S-E's revised proposal for the additional equipment without amending the solicitation to reflect the agency's requirement for that equipment. Following an October 21, 1987, denial of its

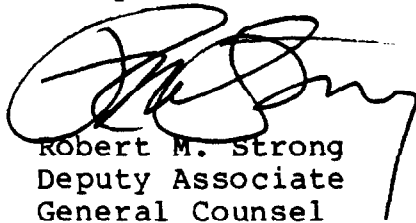
agency-level protest, King, on October 22 protested this matter to our Office. King maintains that an amended solicitation should be issued and the requirement re-competed.

Our Bid Protest Regulations provide for our consideration of a protest which initially was timely filed with the contracting agency, if filed with our Office within 10 working days after the protester learned of the initial adverse agency action on its protest. 4 C.F.R. § 21.2(a)(3) (1987). To be timely filed with the contracting agency, a protest of an apparent solicitation impropriety must be filed prior to the closing date for receipt for proposals and a protest other than an apparent solicitation impropriety has to be received by the contracting agency within 10 working days after the basis of protest is known or should have been known, whichever is earlier. Noreco, Inc., B-223996, Sept. 11, 1986, 86-2 C.P.D. ¶ 288.

Here, it is unclear from King's submissions whether King timely protested the allegedly defective solicitation prior to the closing date for receipt for proposals. Nonetheless, King knew on July 1 that the Air Force was evaluating for a "revised" proposal from S-E which according to King was improperly accepted by that agency on the basis of a defective solicitation. Accordingly, King's October 1, agency-level protest against an award to S-E for equipment which, according to King, was not properly solicited under the RFP, filed several months after July 1, the date King knew this protest basis, is untimely. Noreco, Inc., B-223996, supra. Since we consider King's protest to the Air Force untimely, we find its subsequent protest to this Office untimely and not for consideration on the merits. J.T. Systems, B-212774, Nov. 23, 1983, 83-2 C.P.D. ¶ 612.

We note that the Air Force denied King's untimely agency-level protest. A contracting agency's consideration of the merits of a protest which is untimely under our Bid Protest Regulations does not preclude our later dismissal of the same protest filed with us. J.J. Broderick Company, B-204506, Nov. 23, 1981, 81-2 C.P.D. ¶ 419.

The protest is dismissed as untimely.


Robert M. Strong
Deputy Associate
General Counsel